Remarks

I. Introduction

This is in response to the Office Action dated February 21, 2008, which has been made final. The Office Action rejected claims 1-20 under 35 U.S.C. § 103 as being anticipated by U.S. Patent No. 7,185,052 ("Day") in view of U.S. Patent No. 7,007,089 ("Freedman"). The Office Action rejected claims 21 and 22 under 35 U.S.C. § 103 as being anticipated by Day and Freedman and, further, in view of U.S. Patent No. 6,701,342 (Bartz et al.). The Office Action objected to claim 22 for being dependent on an incorrect independent claim.

In response, Applicants have amended claims 1, 7, 11, 17, 21, and 22, and provided new arguments to traverse the rejections of the Office Action. Claims 1-22 remain for consideration. In response to the finality of the Office Action, Applicants are filing herewith a Request for Continued Examination.

II. Objection to Claim 22

The Office Action has objected to claim 22. Claim 22 recites a limitation to a method and, thus, correctly depends on claim 11 which recites a method. It appears that the Office Action meant to object to claim 21 which recites a system, but depended on the method of claim 11. Therefore, claim 21 (a system claim) has been amended to correctly depend on claim 1 (a system claim).

III. Rejection of Claims 1-20 under 35 U.S.C. § 103

The Office Action rejected claims 1-20 under 35 U.S.C. § 103 as being anticipated by U.S. Patent No. 7,185,052 ("Day") in view of U.S. Patent No. 7,007,089 ("Freedman"). Applicant has provided arguments herein below to overcome this rejection.

As recited in at least paragraph [0008], the present application is directed towards a method and system for delivering an integrated web hosting and content distribution affording predetermined service performance levels (such as maximum allowed response time or bandwidth usage). The web hosting server serves web data as long as the web hosting server is capable of meeting the

predetermined service performance levels (e.g. when a performance value is below a predetermined operational performance threshold). One example of predetermined operational performance threshold is a pre-designated latency threshold. When the web hosting server is no longer able to meet the predetermined service performance level, requests are redirected to a content distribution network to serve the data. At least one benefit of such a system and method, as described at least in paragraph [0051], is to provide simplified service and potentially lower billing, wherein a user may sign up with a service provider and be automatically switched to a CDN only when necessary.

The claimed invention is different than load balancing. Load balancing refers to equalizing the load on plurality of servers. A system in accordance with the present invention places the entire load on a first web server while the web server is capable of meeting the predetermined service performance levels (see paragraph [0048] stating, "performance/load capacity thresholds that trigger a switch from one mode of operation to another"). When a performance value of the web server is above a predetermined operational performance threshold, than the web server is no longer capable of meeting the predetermined service performance levels and requests are redirected to the CDN. For example, where the web host is operated by a provider and a CDN operated by another organization (see paragraph [0056]), it would be desired to serve as much data as possible from the web host rather than equalize the data between the web host and CDN. Requests which are made while performance values are above a predetermined operational performance threshold are sent to a CDN (see paragraph [0048] stating that "the system selects dynamically among[st] the hosting service, and multiple CDNs"). While load-balancing may be used in conjunction with the invention, the current claims are not directed merely to load balancing.

The Day reference is concerned with scheduling traffic and load balancing on a CDN. The Freedman reference is concerned with routing clients in a CDN based on periodic data statistics. Neither the Day nor the Freedman reference is

concerned with when to use and when not to use a CDN; both are only concerned with optimizing the use of a CDN.

Referring now to claim 1, this claim recites a limitation of "affording a predetermined service performance level to an individual client." The Office Action states that this limitation has been taught in the Day reference in the abstract and col. 2, lines 25-27, which teach distributing content based on a predefined capacity reservation, and col. 3, lines 18-22, which disclose the concept of load balancing. Neither citation teaches "a predetermined service performance level." The term "capacity reservation" has not been defined in the prior art reference but in the example given in col. 5, lines 47-62, of the Day reference; a "capacity reservation" appears to be akin to load balancing. The referenced teachings of Day do not disclose a predetermined service performance level, because neither capacity reserving nor load balancing guarantees that a predetermined service performance level is maintained.

Still further, claim 1 contains a limitation wherein a "provider returns a record to the local DNS indicating whether or not the first web hosting server is capable of meeting a predetermined operational performance threshold." The Office Action refers to the Day reference, col. 2, lines 30-36, which discloses functions of sending a request for a CDN address to an authoritative DNS server and the DNS server performing load balancing. Again, Day is concerned with the balancing of load across multiple servers and not the maintenance of an operational performance threshold. The limitation of claim 1 refers to a web server serving data as long as the threshold has not been breached. The load balancing of Day does not disclose this limitation of claim 1.

Still further, claim 1 contains a limitation of "sending the local DNS a record including an IP address of the first web hosting server when a performance value is below a predetermined operational performance threshold." This limitation was amended to substantially reflect the limitation as originally present in this application. The Examiner has already provided arguments with respect to this limitation. This limitation is such that when a performance value (such as bandwidth usage or response time) is below a designated threshold, the

first web hosting server serves the data and not the CDN. As both the Day and Freedman references concern CDNs and not individual web servers, it should be clear that this limitation has not been taught in either prior art reference. The Office Action fails to cite any portion of the prior art references which disclose this limitation. The Office Action has failed to make a prima facie showing of obviousness. Further, and as recited above, the prior art references cited in the Office Action do not teach a performance threshold.

Still further, claim 1 claims a limitation of "the redirection means sending the local DNS a different record causing the local DNS to make a subsequent DNS request to a DNS of the at least one content distribution network when the performance value is equal to or above the predetermined operational performance threshold." The Office Action refers to col. 3, lines 18-22, and col. 5, lines 39-67, of the Day reference, and the Abstract, col. 3, lines 53 through col. 4, line 7, Fig. 2, etc. of the Freedman reference. Again, these references refer to load balancing and/or providing the lowest latency. Neither the Day nor the Freedman reference is concerned with redirection from a web server to a CDN or a predetermined operational performance threshold. Providing the lowest latency, as taught in Freedman, does not teach or suggest that a predetermined threshold has been set or that, upon reaching or exceeding such a threshold, a CDN will be used. For the reasons described above, claim 1 is allowable over the cited art.

Claim 11 contains limitations similar to those argued above with respect to claim 1 and is allowable for the reasons discussed above.

All remaining dependent claims are dependent upon an allowable independent claim and are therefore also allowable. These dependent claims are also allowable because they add additional allowable subject matter as follows.

Claims 2 and 12 contain a limitation wherein "the first web hosting server and one of the at least one content distribution networks are operated under the control of the primary service provider." With regards to both claims, the Office Action refers to col. 2, lines 30-36, of the Day reference teaching placing servers

of a CDN near end users for maximal performance. While such servers are likely under the control of the service provider, the reference does not teach a first web hosting server <u>and</u> a CDN, but only a CDN. The reference does not disclose a web server separate from the CDN itself and, therefore, claims 2 and 12 are allowable.

Claims 3 and 13 of the present application claim monitoring, but not operating, at least one content distribution network. In such an embodiment, the web server is operated by the provider (see claims 1 and 11, respectively), but the CDN is operated by another. The Office Action refers to col. 1, lines 60-67, describing using a facilities-based CDN; however, neither monitoring of the CDN or retaining control of a first web server is disclosed. The Office Action further refers to figs. 5-6, and col 2. Lines 18-36 disclose a method of choosing a CDN from a plurality of CDNs, however, at least the cited portions of the prior art do not teach monitoring a CDN or that the CDN is used in addition to a web server separate from the CDN. Claims 3 and 13 are allowable.
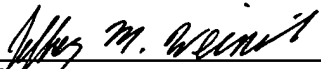
Claims 6 and 16 recite the service provider receiving "detailed capacity and health statistics of any of the at least one CDN under the operational control of the primary service provider, and receives aggregate capacity and health statistics from others of the at least one CDN not under the operational control of the primary service provider." Thus, these claims are limited to monitoring <u>both</u> a CDN controlled by the provider and a CDN controlled by another. The Office Action refers to Fig. 6, col. 2, lines 30-36, col. 3, lines 18-22, and col. 5, lines 39-67. Again, the referenced portions of Day refer to load balancing, providing the lowest latency, and the like. There is no disclosure in at least the cited portions of Day referring to a CDN under the control of the provider, <u>and</u> a CDN under the control of another, <u>and</u> the monitoring of both by a provider. Thus, claims 6 and 16 are allowable.

For the reasons discussed above, all independent claims are allowable over the cited art. Allowance of all independent claims is requested.

VI. Conclusion

For the reasons discussed above, all pending claims are allowable over the cited art. Reconsideration and allowance of all claims is respectfully requested.

Respectfully submitted,

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